



Decision

Matter of: Major Kenneth D. Olin, USAF - Waiver Request

File: B-255962

Date: June 7, 1994

DIGEST

Incident to a permanent change of station, a member's shipment of household goods exceeded his weight allowance because the carrier loaded and transported hazardous materials that the member had told the carrier had been sold and therefore should not be transported (and which should not have been included in the shipment anyway because they did not constitute household goods). Although waiver of the member's debt resulting from the excess weight charge is not available because no erroneous payment was made, the carrier, not the member, should be held responsible for the excess weight since the carrier knew it improperly was including non-government, non-member items in the shipment.

DECISION

We have been asked whether Air Force Major Kenneth D. Olin's debt that arose because the weight of a shipment of his household goods exceeded his weight allowance for a permanent change of station (PCS) may be waived under 10 U.S.C. § 2774. Although debts resulting from excess weight charges generally may not be waived under the statute, we think that in this case the carrier, not the government or the member, should be held responsible for the excess charges.

On September 19, 1990, Major Olin was issued travel orders authorizing a PCS from Holloman AFB, New Mexico, to Hill AFB, Utah. Although Major Olin was authorized to ship 17,000 pounds, the net weight of his shipment was 19,026 pounds.

The record shows that the reason the shipment was overweight was that the carrier included approximately 2,000 pounds of hazardous chemicals that should not have been transported because Major Olin had sold the chemicals and had informed the driver not to load them on the truck. Additionally, the carrier loaded and transported recreational vehicles that Major Olin intended to transport himself. When before the actual transportation Major Olin asked the carrier to unload

the items in question, he was informed that there would be an additional charge to unload, irrespective of whether the items should have been loaded in the first instance. Because of other circumstances occurring on the night the shipment was loaded, and since Major Olin was unable to contact the Holloman AFB transportation office in view of the late hour, the member did not object further.

The carrier transported and billed the Air Force for the entire shipment, and was paid. The carrier later was suspended from transporting household goods for 30 days, because the carrier had included hazardous chemicals with the shipment; such items are not considered household goods, and are to be handled and shipped separately.

Under 10 U.S.C. § 2774, the Comptroller General or the head of an agency may waive a claim of the United States against a person arising out of an erroneous payment of any pay or allowances, including travel and transportation allowances made to or on behalf of a member of the uniformed services, if collection would be against equity and good conscience and not in the best interest of the United States.

The waiver statute is not for application here, however. As we explained in our decision in Transportation Debt Waivers, 67 Comp. Gen. 484, 486-487 (1988), it is standard practice to ship an individual's household goods pursuant to a government bill of lading at government expense, and then to collect any excess weight charges from the individual. In light of that practice, we held in the cited case that an agency's initial contract payment of excess weight charges to a carrier, in reliance on later collection from the member, generally cannot be considered "erroneous" for purposes of 10 U.S.C. § 2774; claims against service members arising from such payments therefore may not be considered for waiver under the statute.

Nevertheless, we think the carrier, not the government or Major Olin, should absorb the excess costs. A member has the responsibility to determine what household goods are shipped, and the record shows that Major Olin told the carrier before loading that the chemicals were not to be

¹We did recognize, in the decision, an exception to that principle where the excess weight charges were incurred as the result of government error, such as where the excess weight was shipped on the basis of erroneous authorizing orders.

shipped.² Major Olin also pointed out after loading that the chemicals were not part of his shipment, and requested that they be removed from the truck; we do not understand the carrier's response about an additional charge for that effort. In fact, the record shows that because the chemicals no longer belonged to Major Olin, he had to return them to the point of the shipment's origin, at his own expense.

We recognize that when the Air Force paid the carrier for the shipment's entire weight it may have had no reason to know that the carrier included the chemicals (or the vehicles). Nevertheless, once the facts as described above became known to the agency, we think the carrier, not Major Olin, should have been held responsible for the excess weight charges. We do not believe a carrier to whom the government issued a bill of lading to move a member's household goods should be compensated for excess weight charges caused by the carrier's disregard of directions that certain items simply do not belong to the shipper and thus should not be loaded; the cost of transporting non-government, non-member items should not be reimbursable.

In sum, while Major Olin's debt cannot be considered for waiver under 10 U.S.C. § 2774, we suggest that the Air Force reconsider the payment to the carrier; in our view, Major Olin should not be held liable for the excess weight.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

²Major Olin says that he also told the carrier not to load the vehicles. In any case, practically the entire amount of excess weight on the truck can be attributed to the chemicals.